

# EXHIBIT 5

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

TYLER HARDY and DANNY ROCHEFORT,  
Individually and On Behalf of All Others  
Similarly Situated,

Plaintiffs,

v.

EMBARK TECHNOLOGY, INC. f/k/a  
NORTHERN GENESIS ACQUISITION CORP.  
II, IAN ROBERTSON, KEN MANGET,  
CHRISTOPHER JARRATT, PAUL  
DALGLISH, ROBERT SCHAEFER, BRAD  
SPARKES, ALEX RODRIGUES, and  
RICHARD HAWWA,

Defendants.

No. 3:22-cv-02090-JSC

Hon. Jacqueline Scott Corley

EXHIBIT A-2

**PROOF OF CLAIM AND RELEASE FORM**

**A. GENERAL INSTRUCTIONS & INFORMATION**

1. You are urged to read carefully the accompanying Notice of Pendency and Proposed Settlement of Class Action (the “Notice”) and the Stipulation and Agreement of Settlement (“Stipulation”). Both documents are available at [www.strategicclaims.net/embark/](http://www.strategicclaims.net/embark/). All capitalized terms used herein shall have the same meaning defined in the Notice and the Stipulation.

2. To file a claim and recover under the Settlement of this Action, you must have (i) purchased or otherwise acquired Embark Technologies, Inc. securities pursuant or traceable to the July 2, 2021 registration statement, including all amendments thereto, issued in connection with the November 2021 business combination and were damaged; and/or (ii) beneficially owned and/or held Northern Genesis Acquisition Corp. II common stock as of October 6, 2021, the record date, and were eligible to vote at Northern Genesis’ November 9, 2021 special meeting with respect to the business combination, and were damaged. You must not be a person who is excluded from the Settlement Class, as defined in the Notice. You also must not have requested exclusion from the Settlement Class.

3. If you are a Settlement Class Member and wish to participate in the proposed Settlement, you must complete and sign this Proof of Claim and Release Form (“Proof of Claim”). The submission of a Proof of Claim does not ensure that your claim will be upheld or that you will share in any recovery. All claims are subject to verification and investigation. If you fail to file a properly addressed and fully completed Proof of Claim, fail to provide required

documentation, or are not eligible to recover under the Settlement, your claim may be rejected, and you may be precluded from any recovery from the proposed Settlement. You may also be requested to provide further information.

4. You must mail your completed and signed Proof of Claim, **postmarked on or before** \_\_\_\_\_, **2023,202**, to the Settlement Administrator at:

Embark Securities Litigation  
c/o Strategic Claims Services  
P.O. Box 230  
600 N. Jackson Street, Suite 205  
Media, PA 19063  
Tel: (866) 274-4004  
Fax: (610) 565-7985  
Email: info@strategicclaims.net

5. If you are a member of the Settlement Class and do not timely request exclusion, **you will be bound** by any judgment entered in the Action **whether or not you submit a Proof of Claim**.

6. If you are **not** a member of the Settlement Class, **do not** submit a Proof of Claim. For help completing this Proof of Claim, please contact the Settlement Administrator.

## **B. CLAIMANT IDENTIFICATION INSTRUCTIONS**

1. If you purchased Northern Genesis common stock and registered the certificate in your name, you are the beneficial owner as well as the owner of record. If, however, you purchased Northern Genesis common stock and the certificate was registered in the name of a third party (such as your stockbroker), you are the beneficial owner and the third party is the owner of record. Proceeds of this Settlement will be distributed to Settlement Class members who are beneficial owners of Northern Genesis common stock.

2. If you purchased Embark common stock and registered the certificate in your name, you are the beneficial owner as well as the owner of record. If, however, you purchased Embark common stock and the certificate was registered in the name of a third party (such as your stockbroker), you are the beneficial owner and the third party is the owner of record. Proceeds of this Settlement will be distributed to Settlement Class members who are beneficial owners of Embark common stock.

3. Use Section D of this form, entitled "Claimant Identification Schedule," to identify yourself and each owner of record, if different from the beneficial owner of Northern Genesis common stock and/or Embark common stock that forms the basis of this claim. **This claim must be filed by the actual beneficial owner(s), or the legal representative of such owner(s), of the stock upon which this claim is based.**

4. If shares of Northern Genesis common stock and/or Embark common stock were owned jointly, all joint owners must sign the Proof of Claim. Executors, administrators, guardians, conservators, and trustees may complete and sign the Proof of Claim on behalf of persons or entities represented by them, but they must identify such persons or entities and provide proof of their authority (e.g., powers of attorney or currently effective letters testamentary or letters of administration). The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the Claim. If you fail to provide the foregoing information, your claim may be delayed or rejected.

5. You must file a separate Proof of Claim for each differently named account or ownership, such as an individual account, an IRA account, a joint account, or a custodial account, etc. Joint tenants, co-owners, or custodians UGMA should file a single claim. Claimants who file one or more claims (e.g., one in Claimant's name and one for an IRA or joint ownership) must identify the other claims filed.

#### **C. INSTRUCTIONS FOR SCHEDULE OF TRANSACTIONS**

1. Use Section E of this form, entitled "Schedule of Transactions," to supply all of the requested information with respect to: (i) your holdings of Northern Genesis common stock as of the close of the U.S. financial markets on October 6, 2021; (ii) ***all*** of your transactions—purchases, other acquisitions, sales, and other dispositions—in Northern Genesis common stock and/or Embark common stock that took place at any time during the period from October 7, 2021 through November 23, 2021, both dates inclusive, whether such transactions resulted in a profit or a loss; and (iii) your holdings of Embark common stock as of the close of the U.S. financial markets on November 23, 2021.

2. If you need more space, attach separate, numbered sheets giving all of the required information in substantially the same form. Sign each additional sheet and print or type your name at the top.

3. List each transaction separately and in chronological order by trade date, beginning with the earliest. You must accurately provide the month, day, and year of each transaction, as well as the purchase and/or sales price, excluding commissions, taxes, and other fees. The date of a transaction is the "trade" date and not the "settlement" date. The date of covering a "short sale" is deemed to be the date of purchase; and the date of a "share sale" is deemed to be the date of sale. Shares originally sold short will have a Recognized Loss of zero. Northern Genesis common stock and/or Embark common stock acquired or disposed of for any consideration other than, or in addition to, cash must be reported as having been acquired or disposed of.

4. You ***must*** attach to your claim form ***copies*** of brokerage confirmations, monthly statements, or other documentation of your transactions in Northern Genesis common stock and/or Embark common stock in order for your claim to be valid. A complete list of acceptable supporting documentation can be found at [www.strategicclaims.net/embark/](http://www.strategicclaims.net/embark/). Failure to provide this documentation could delay verification or result in rejection of your Claim. The Settlement

Administrator may also request additional information as required to efficiently and reliably calculate your losses.

5. If your trading activity during the requested time periods exceeds 50 transactions, you must provide all information required in the Schedule of Transactions in an electronic file. For instructions and parameters concerning such a submission, please visit <https://www.strategicclaims.net/institutional-filers> or call the Settlement Administrator at (866) 274-4004.

6. If you have questions or need additional Proofs of Claim, contact the Settlement Administrator via the information in the preceding paragraph. You may make photocopies of this form.

7. Please refer to the Plan of Allocation set forth in the accompanying Notice for a detailed explanation of how a Claimant's Recognized Loss will be calculated.

**D. CLAIMANT IDENTIFICATION SCHEDULE**

Claims must be received by the Settlement Administrator postmarked no later than \_\_\_\_\_, 2023.202.

**Please Type or Print**

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Beneficial Owner's Name (as it appears on your brokerage statement)

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Joint Beneficial Owner's Name (as it appears on your brokerage statement)

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Record Owner's Name and Address (*if different from beneficial owner listed above*)

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Street Address

---

Street Address 2

---

City

---

State

---

Zip Code

---

Foreign Province

---

Foreign Country

(\_\_\_\_\_) \_\_\_\_\_

(\_\_\_\_\_) \_\_\_\_\_

Telephone Number (Daytime)

\_\_\_\_\_  
Fax Number

Telephone Number (Evening)

\_\_\_\_\_  
E-Mail Address**Specify one of the following.**

Claimant holder of Northern Genesis common stock is:

<input type="checkbox"/>	A. Individual Claimant: I am a claimant acting in my own interest and am the sole owner of the shares.
<input type="checkbox"/>	B. Joint Claimants: We are claimants acting jointly.
<input type="checkbox"/>	C. Corporate Claimant: I am the _____ of _____, a corporation whose address is _____. I am authorized to make this claim on behalf of the corporation. The corporation is the owner of the shares.
<input type="checkbox"/>	D. IRA Claimant: I am a claimant acting on behalf of my IRA. The shares are held in my IRA.
<input type="checkbox"/>	E. Partnership Claimant: I am a partner of _____, a partnership whose business address is _____. I am authorized to make this claim on behalf of the partnership. The partnership is the owner of the shares.
<input type="checkbox"/>	F. Decedent's Estate Claimant: I am the executor or the administrator (circle which) of the estate of _____, whose last address was _____. (Valid proof of authority must accompany this claim.)
<input type="checkbox"/>	G. Trust Claimant: I am a trustee of _____, a trust authorized under the laws of _____. I am authorized to make this claim on behalf of the trust. The trust is the owner of the shares
<input type="checkbox"/>	H. Custodial or Guardian Claimant: I am the custodian or the guardian (circle which) for _____ whose address is _____. (Valid proof of authority must accompany this claim.)
<input type="checkbox"/>	I. Other: (Specify) _____

**Specify one of the following.**

Claimant holder of Embark common stock is:

<input type="checkbox"/>	A. Individual Claimant: I am a claimant acting in my own interest and am the sole owner of the shares.
<input type="checkbox"/>	B. Joint Claimants: We are claimants acting jointly.
<input type="checkbox"/>	C. Corporate Claimant: I am the _____ of _____, a corporation whose address is _____. I am authorized to make this claim on behalf of the corporation. The corporation is the owner of the shares.
<input type="checkbox"/>	D. IRA Claimant: I am a claimant acting on behalf of my IRA. The shares are held in my IRA.
<input type="checkbox"/>	E. Partnership Claimant: I am a partner of _____, a partnership whose business address is _____. I am authorized to make this claim on behalf of the partnership. The partnership is the owner of the shares.
<input type="checkbox"/>	F. Decedent's Estate Claimant: I am the executor or the administrator (circle which) of the estate of _____, whose last address was _____. (Valid proof of authority must accompany this claim.)
<input type="checkbox"/>	G. Trust Claimant: I am a trustee of _____, a trust authorized under the laws of _____. I am authorized to make this claim on behalf of the trust. The trust is the owner of the shares
<input type="checkbox"/>	H. Custodial or Guardian Claimant: I am the custodian or the guardian (circle which) for _____ whose address is _____. (Valid proof of authority must accompany this claim.)
<input type="checkbox"/>	I. Other: (Specify) _____

**E. SCHEDULE OF TRANSACTIONS**

1. State the total number of shares of Northern Genesis common stock (ticker symbol “NGAB”) owned at the close of the U.S. financial markets on October 56, 2021, long or short (*if none, enter “0”; if other than zero, must be documented*):

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2. Separately list each and every purchase of Northern Genesis common stock during the period from October 67, 2021 through November 2310, 2021, both dates inclusive, and provide the following information (*must be documented*):

Trade Date (list chronologically) Month/Day/Year	Number of Shares Purchased	Price Per Share (excluding commissions, taxes, and other fees)	Total Purchase Price (excluding commissions, taxes, and other fees)
____ / ____ / ____		\$	\$
____ / ____ / ____		\$	\$
____ / ____ / ____		\$	\$

3. Separately list each and every sale of Northern Genesis common stock during the period from October 67, 2021 through November 2310, 2021, both dates inclusive, and provide the following information (*must be documented*):

Trade Date (list chronologically) Month/Day/Year	Number of Shares Sold	Price Per Share (excluding commissions, taxes, and other fees)	Total Sale Price (excluding commissions, taxes, and other fees)
____ / ____ / ____		\$	\$
____ / ____ / ____		\$	\$
____ / ____ / ____		\$	\$

4. State the total number of shares of Northern Genesis common stock owned at the close of the U.S. financial markets on November 2310, 2021, long or short (*if none, enter “0”; if other than zero, must be documented*):

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5. State the total number of newly issued shares of Embark common stock (ticker symbol “EMBK”) acquired in the business combination on or about November 10, 2021 through the automatic reclassification of Northern Genesis common stock held by you (*if none, enter “0”; if other than zero, must be documented*):

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6. State the total number of newly issued shares of Embark common stock acquired in the business combination on or about November 10, 2021 through the conversion of existing Legacy Embark securities held by you (*if none, enter “0”; if other than zero, must be documented*):

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6. Separately list each and every purchase of Embark common stock during the period from November 11, 2021 through November 23, 2021, both dates inclusive, and provide the following information (*must be documented*):

Trade Date (list chronologically) Month/Day/Year	Number of Shares Purchased	Price Per Share (excluding commissions, taxes, and other fees)	Total Purchase Price (excluding commissions, taxes, and other fees)
____ / ____ / ____		\$	\$
____ / ____ / ____		\$	\$
____ / ____ / ____		\$	\$

7. Separately list each and every sale of Embark common stock during the period from November 11, 2021 through November 23, 2021, both dates inclusive, and provide the following information (*must be documented*):

Trade Date (list chronologically) Month/Day/Year	Number of Shares Sold	Price Per Share (excluding commissions, taxes, and other fees)	Total Sale Price (excluding commissions, taxes, and other fees)

____ / ____ / ____		\$	\$
____ / ____ / ____		\$	\$
____ / ____ / ____		\$	\$

8. State the total number of shares of Embark common stock owned at the close of the U.S. financial markets on November 23, 2021, long or short (*if none, enter “0”; if other than zero, must be documented*):

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**If you need additional space, attach the required information on separate, numbered sheets in the same format as above and print your name and Social Security or Taxpayer Identification number at the top of each additional sheet.**

**YOU MUST ALSO READ THE RELEASE AND SIGN THE CERTIFICATION OR THE W-8 CERTIFICATION BELOW**

**F. SUBMISSION TO JURISDICTION OF THE COURT**

By submitting this Proof of Claim, I/we, and every Settlement Class Member I/we represent, submit to the jurisdiction of the United States District Court for the Northern District of California for purposes of this Action and the Settlement of the Action, as reflected in the Stipulation. I/We further agree to be bound by the orders of the Court, agree that this Proof of Claim, my/our status or the status of the Settlement Class Member I/we represent as a Claimant, and the allowable amount of this claim will be subject to review and further inquiry, and that I/we will furnish such additional documentation with respect to this Proof of Claim as may be required.

**G. RELEASE**

1. By signing this Proof of Claim, I/we hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, release and discharge from the Settlement Class Claims each and all of the “Released Persons” defined as each and all of Defendants, Defendants’ Counsel, and any of their respective Related Parties. “Related Parties” means any Person’s former, present or future parents, subsidiaries, divisions, controlling persons, associates, related entities and affiliates, any entity in which a Person has a controlling interest, and each and all of their respective present and former employees, members, partners, principals, officers, directors, controlling shareholders, agents, attorneys, advisors (including financial or investment advisors), accountants, auditors, consultants, underwriters, investment bankers, commercial bankers, entities providing fairness opinions, general or limited partners or partnerships, limited liability companies, sponsors, members, join ventures and insurers and reinsurers or co-insurers of each of them; as well as the predecessors, successors, estates,

immediate family members, spouses, heirs, executors, trusts, trustees, administrators, agents, legal or personal representatives, assigns, and assignees of each of them.

2. “Settlement Class Claims” means all claims, rights, liabilities, demands, damages, losses, and causes of action of every nature and description, including Unknown Claims, whether contingent or absolute, mature or unmature, discoverable or undiscoverable, liquidated or unliquidated, accrued or unaccrued, including those that are concealed or hidden, regardless of legal or equitable theory, that Plaintiffs or any other member(s) of the Settlement Class asserted or could have asserted in any forum that are based on, related to, or arising out of any claims, allegations, statements, representations, omissions, facts, transactions, occurrences or other matters that are or could have been the subject of the Action, whether known or unknown, relating to the purchase, acquisition, sale, disposition or holding of Northern Genesis and/or Embark common stock during the Exchange Act Class Period and/or the Securities Act Class Period.

3. “Unknown Claims” means collectively, any and all Settlement Class Claims that any Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor, and any Defendant Claims that any Defendant does not know or suspect to exist in his, her, or its favor, which, if known by him, her, or it, might have affected his, her, or its decision to enter into this Settlement, execute this Stipulation, and agree to all the various releases set forth herein, or might have affected his, her, or its decision not to object to this Settlement or not exclude himself, herself, or itself from the Settlement Class. Unknown Claims include, without limitation, those claims in which some or all of the facts composing the claim may be unsuspected or undisclosed, concealed, or hidden.

## **H. REPRESENTATIONS**

I/We acknowledge that I/we have read the Notice of Pendency and Proposed Settlement of Class Action and that pursuant thereto I/we file this claim to participate in the Settlement.

I/We hereby warrant and represent that neither I/we, nor any person I/We represent, is a Defendant (as defined in the Notice) with respect to any of the claims asserted in the Action, a member of the immediate family of any of the Defendants, or anyone excluded from the Settlement Class as it is defined in the Stipulation, or a person or entity who has requested exclusion from the Settlement Class.

I/We hereby warrant and represent that I/We have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion hereof.

I/We hereby warrant and represent that I/We have included information about all of My/Our transactions in Northern Genesis common stock during the period from October 7, 2021 through November 10, 2021, both dates inclusive, as well as the number of shares of Northern Genesis common stock held by Me/Us at the close of the U.S. financial markets on October 6, 2021.

I/We hereby warrant and represent that I/We have included information about all of My/Our transactions in Embark common stock during the period from November 11, 2021 through November 23, 2021, both dates inclusive, as well as the number of shares of Embark common stock held by Me/Us at the close of trading on November 23, 2021.

I/We hereby warrant and represent that I am/we are authorized to execute and deliver this Proof of Claim Form and Release.

**I. Certification**

I/We certify that I am/we are not subject to backup withholding. (**If you have been notified by the IRS that you are subject to backup withholding, strike out the previous sentence.**).

**I/We certify that I/we purchased or otherwise acquired the Northern Genesis common stock listed in the above Schedule during the Exchange Act Class Period and/or Embark common stock during the Securities Act Class Period.**

I/We declare and affirm under penalties of perjury that the foregoing information and the documents attached hereto, including the Social Security or Taxpayer Identification Number shown on this Proof of Claim, are true, correct and complete to the best of my/our knowledge, information, and belief, and that this Proof of Claim was executed this \_\_\_\_\_ day of, \_\_\_\_\_ 2023202 in:

\_\_\_\_\_  
(City) \_\_\_\_\_  
(State/Country)

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Signature of Joint Claimant, if any

\_\_\_\_\_  
(Print your name here)

\_\_\_\_\_  
(Print your name here)

\_\_\_\_\_  
Signature of Person signing on behalf of Claimant

\_\_\_\_\_  
(Print your name here)

\_\_\_\_\_  
Capacity of person signing on behalf of Claimant, if other

than an individual, (Executor, President, Custodian, etc.)

**SUBSTITUTE FORM W-8: IF YOU ARE NOT A RESIDENT OR CITIZEN OF THE UNITED STATES, COMPLETE THE FOLLOWING:**

Permanent residence (principal office if a corporation): \_\_\_\_\_

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Name of U.S. Business

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Address of U.S. Business

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Type of Business \_\_\_\_\_ Tax Identification Number \_\_\_\_\_

**W-8 Certification:** Under the penalties of perjury, I certify that the information provided above is true, correct and complete.

Signature(s) \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

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**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME. THANK YOU FOR YOUR PATIENCE.**

**Reminder Checklist:**

1. Remember to sign the above Release and Certification (or W-8 Certification).
2. Remember to attach only **copies** of acceptable supporting documentation, a complete list of which can be found on the Settlement Administrator's website at [www.strategicclaims.net/embark/](http://www.strategicclaims.net/embark/).
3. Do not send originals of securities certificates.
4. Keep copies of the completed claim form and documentation for your own records.

5. If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested, or its equivalent. **You will bear all risks of delay or non-delivery of your claim.**
6. If your address changes in the future, or if these documents were sent to an old or incorrect address, please send us **written** notification of your new address.

If you have questions or concerns regarding your claim, please contact the Settlement Administrator at:

Embark Securities Litigation  
c/o Strategic Claims Services  
P.O. Box 230  
600 N. Jackson Street, Suite 205  
Media, PA 19063  
Tel: (866) 274-4004  
Fax: (610) 565-7985  
Email: [info@strategicclaims.net](mailto:info@strategicclaims.net)  
[www.strategicclaims.net/embark/](http://www.strategicclaims.net/embark/)